

BILL ANALYSIS

Senate Research Center
83R20538 NC-F

H.B. 2075
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Intergovernmental Relations
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to interested parties, after Hurricane Ike struck the Texas Gulf Coast in 2008, a number of condominium associations discovered that they were unable to borrow money to pay for the necessary repairs because their dedicatory instruments did not permit them to secure a loan by pledging assessment. The interested parties contend that, as a result, the associations had to increase fees to cover these repair costs. H.B. 2075 seeks to address this issue by amending the Uniform Condominium Act to address this issue, as well as provide additional updates to the statute.

H.B. 2075 amends current law relating to the operation of certain condominium unit owners' associations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 82.002(c), Property Code, to provide that this section and the following sections apply to a condominium in this state for which the declaration was recorded before January 1, 1994: Sections 82.005 (Separate Titles and Taxation), 82.006 (Applicability of Local Ordinances, Regulations, and Building Codes), 82.007 (Condemnation), 82.053 (Construction and Validity of Declaration and Bylaws), 82.054 (Description of Units), 82.102(a)(1) (relating to authorizing the unit owners' association (association) to adopt and amend bylaws), (2) (relating to authorizing the association to adopt and amend budgets for monies and collect assessments for common expenses from unit owners), (3) (relating to authorizing the association to hire and terminate managing agents and other employees, agents, and independent contractors), (4) (relating to authorizing the association to institute, defend, intervene in, settle, or compromise litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium), (5) (relating to authorizing the association to make contracts and incur liabilities relating to the operation of the condominium), (6) (relating to authorizing the association to regulate the use, maintenance, repair, replacement, modification, and appearance of the condominium), (7) (relating to authorizing the association to adopt and amend rules regulating the use, occupancy, leasing or sale, maintenance, repair, modification, and appearance of units and common elements, to the extent the regulated actions affect common elements or other units, (a)(12) (relating to authorizing the association to impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given, reasonable fines for violations of the declaration, bylaws, and rules of the association), (13) (relating to authorizing the association to adopt and amend rules regulating the collection of delinquent assessments and the application of payments), (14) (relating to authorizing the association to adopt and amend rules regulating the termination of utility service to a unit, the owner of which is delinquent in the payment of an assessment that is used, in whole or in part, to pay the cost of that utility), (15) (relating to authorizing the association to impose reasonable charges for preparing, recording, or copying declaration amendments, resale certificates, or statements of unpaid assessments), (16) (relating to authorizing the association to enter a unit for bona fide emergency purposes when conditions present an imminent risk of harm or damage to the

common elements, another unit, or the occupants), (17) (relating to authorizing the association to assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration so provides), (18) (relating to authorizing the association to suspend the voting privileges of or the use of certain general common elements by an owner delinquent for more than 30 days in the payment of assessments), (19) (relating to authorizing the association to purchase insurance and fidelity bonds it considers appropriate or necessary), (20) (relating to authorizing the association to exercise any other powers conferred by the declaration or bylaws), (21) (relating to authorizing the association to exercise any other powers that may be exercised in this state by a corporation of the same type as the association), (f), and (g), 82.108 (Meetings), 82.111 (Insurance), 82.113 (Association's Lien for Assessments), 82.114 (Association Records), 82.116 (Management Certificate), 82.118 (Service of Process on Unit Owners in Certain Municipalities; Change of Address Required), 82.157 (Resale of Unit), and 82.161 (Effect of Violations on Rights of Action and Attorney's Fees), rather than Section 82.102(a)(1)-(7) and (12)-(22) (relating to authorizing the association to exercise any other powers necessary and proper for the government and operation of the association).

SECTION 2. Amends Section 82.003(a), Property Code, by amending Subdivision (11) and adding Subdivision (11-a), to redefine "declaration" and to define "dedicatory instrument."

SECTION 3. Amends Section 82.102, Property Code, by amending Subsection (a) and adding Subsections (f) and (g), as follows:

(a) Authorizes the unit owners' association (association), acting through the board of directors or the body designated to act on behalf of the association (board), unless otherwise provided by the declaration, to take certain actions, including to impose interest and late charges for late payments of assessments, returned check charges, and, if notice and an opportunity to be heard are given in accordance with Subsection (d) (relating to requiring the association to give to the unit owner a written notice before it may charge the owner for property damage), reasonable fines for violations of the declaration, bylaws, and rules of the association. Deletes existing text authorizing the association, acting through the board, unless otherwise provided by the declaration, to assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides. Makes nonsubstantive changes.

(f) Authorizes the association by resolution of the board, except as provided by Subsection (g), to:

(1) borrow money; and

(2) assign as collateral for the loan authorized by the resolution the association's right to future income, including the right to receive assessments and the association's lien rights.

(g) Requires the loan or assignment, if a dedicatory instrument requires a vote of members of the association to borrow money or assign the association's right to future income or the association's lien rights, to be approved as provided by the dedicatory instrument. Authorizes the board, to determine whether a vote for that purpose may be cast electronically, by absentee ballot, in person or by proxy at a meeting called for that purpose, or by written consent. Provides that, if a lower approval threshold is not provided by the dedicatory instrument, approval requires the consent of owners holding 67 percent of all voting interests.

SECTION 4. Amends Section 82.111, Property Code, by amending Subsections (c), (i), and (j) and adding Subsections (k), (l), and (m), as follows:

(c) Authorizes insurance policies maintained under Subsection (a) (relating to requiring the association to maintain certain insurance elements) to provide for commercially reasonable deductibles as the board determines appropriate or necessary.

(i) Requires any portion of the condominium for which insurance is required that is damaged or destroyed, except as provided by this section, to be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners vote to not rebuild, rather than requires any portion of the condominium for which insurance is required that is damaged or destroyed to be promptly repaired or replaced by the association unless the condominium is terminated, repair or replacement would be illegal under any state or local health or safety statute or ordinance, or at least 80 percent of the unit owners, including each owner of a unit or assigned limited common element that will not be rebuilt or repaired, vote to not rebuild. Authorizes each owner of a unit to vote, regardless of whether the owner's unit or limited common element has been damaged or destroyed. Authorizes a vote to be cast electronically or by written ballot if a meeting is not held for that purpose or in person or by proxy at a meeting called for that purpose. Provides that, except as provided by this section, the cost of repair or replacement in excess of the insurance proceeds, rather than proceeds and reserves, is a common expense, and the board is authorized to levy an assessment to pay the expenses in accordance with each owner's common expense liability. Requires any insurance proceeds attributable to the damaged common elements, if the entire condominium is not repaired or replaced, to be used to restore the damaged area to a condition compatible with the remainder of the condominium, the insurance proceeds attributable to units and limited common elements that are not rebuilt are required to be distributed to the owners of those units and the owners of the units to which those limited common elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds to be distributed to all the unit owners in accordance with each owner's undivided interest in the common elements unless otherwise provided in the declaration, rather than distributed to all the unit owners as their interests may appear.

(j) Requires the party who would be responsible for the repair in the absence of insurance, if the cost to repair damage to a unit or common element covered by the association's insurance is less than the amount of the applicable insurance deductible, to pay the cost for the repair of the unit or common element.

(k) Provides that, if the association's insurance provides coverage for the loss and the cost to repair the damage to a unit or common element is more than the amount of the applicable insurance deductible, the dedicatory instruments determine payment for the cost of the association's deductible and costs incurred before insurance proceeds are available. Provides that, if the dedicatory instruments are silent, the board of directors of the association by resolution is required to determine the payment of those costs, or if the board does not approve the resolution, the costs are a common expense. Provides that a resolution under this subsection is considered a dedicatory instrument and is required to be recorded in each location in which the declaration is recorded.

(l) Authorizes the association, if damage to a unit or the common elements is due wholly or partly to an act or omission of any unit owner or a guest or invitee of the unit owner, to assess the deductible expense and any other expense in excess of insurance proceeds against the owner and the owner's unit.

(m) Creates this subsection from existing text. Makes no further change to this subsection.

SECTION 5. Amends Section 82.113(g), Property Code, as follows:

(g) Authorizes the owner of a unit purchased at a foreclosure sale of the association's lien for assessments, rather than the owner of a unit used for residential purposes and purchased by an association at a foreclosure sale of the association's lien for assessments, to redeem the unit not later than the 90th day after the date of the foreclosure sale. Requires the owner, if the association is the purchaser, to pay to the association to redeem the unit all amounts due the association at the time of the foreclosure sale, interest from the date of foreclosure sale to the date of redemption at the rate provided by the

declaration for delinquent assessments, reasonable attorney's fees and costs incurred by the association in foreclosing the lien, any assessment levied against the unit by the association after the foreclosure sale, and any reasonable cost incurred by the association as owner of the unit, including costs of maintenance and leasing. Requires the redeeming owner, if a party other than the association is the purchaser, to pay to the purchaser of the unit at the foreclosure sale an amount equal to the amount bid at the sale, interest on the bid amount computed from the date of the foreclosure sale to the date of redemption at the rate of six percent, any assessment paid by the purchaser after the date of foreclosure, and any reasonable costs incurred by the purchaser as the owner of the unit, including costs of maintenance and leasing. Requires the redeeming owner to also pay to the association all assessments that are due as of the date of the redemption and reasonable attorney's fees and costs incurred by the association in foreclosing the lien. Requires the purchaser of the unit at the foreclosure sale, on redemption, to execute a deed with no warranty to the redeeming unit owner, rather than requires the association, on redemption, to execute a deed to the redeeming owner. Makes conforming changes.

SECTION 6. Amends Section 82.116, Property Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Requires the county clerk of each county in which a management certificate is filed as required by this section to record the management certificate in the real property records of the county and index the document as a "Condominium Association Management Certificate."

(a-2) Requires each condominium unit owners' association that recorded a management certificate under this section before September 1, 2013, to ensure that all management certificates are recorded and indexed as provided by Subsection (a-1), to record a new management certificate on or before January 1, 2014. Provides that this subsection expires January 1, 2015.

SECTION 7. (a) Makes application of 82.111, Property Code, as amended by this Act, prospective.

(b) Makes application of 82.113(g), Property Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2013.